



National Benefit Fund (646) 473-9200 | Pension Fund • (646) 473-8666
Greater New York Benefit Fund • (212) 541-9150 | Pension Fund • (646) 473-8666
Home Care Employees Benefit and Pension Funds • (646) 473-9200
Home Health Aide Benefit Fund • (646) 473-7470

330 WEST 42ND STREET ■ NEW YORK, NY 10036-6977 ■
WWW.1199NBF.ORG

October 8, 2010

By UPS Overnight Delivery

Mr. James Mayhew
US Department of Health and Human Services
Office of Consumer Information and Insurance Oversight
Room 737-F-04
200 Independence Ave, SW
Washington DC 20201

Re: Request for Waiver of Restricted Annual Limits

Dear Mr. Mayhew:

Please accept this letter, on behalf of the 1199SEIU Greater New York Benefit Fund (“Fund”), with respect to its separate plan for New Jersey members (“Plan”) as a request for a waiver of the restrictions on annual limits on essential health benefits established under the Patient Protection and Affordable Care Act (“PPACA”). 75 Fed. Reg. 37188. Although the interim final regulation issued by the US Departments of Health and Human Services, Labor, and Treasury allow restricted annual limits before 2014, even under this provision, unless the Fund is granted a waiver, the Plan will have to eliminate coverage for all of its members’ spouses in order to offset the dramatic cost increase of (b)(4) % that would result from the elimination of the annual cap.

The Plan is a multiemployer benefit plan that provides medical, hospital, prescription, dental and vision benefits to its participants in New Jersey. The Fund is a multi-employer trust fund established in accordance with Section 186(c) of the Labor Management Relations Act of 1947, an “employee welfare benefit plan” as that term is defined in Section 3(1) of ERISA and a Voluntary Employee Beneficiary Association (“VEBA”), as that term is defined in Section 501(c)(9) of the Internal Revenue Code, as amended. As a multi-employer trust, the Fund is entirely financed with contributions from contributing employers pursuant to various collective bargaining agreements between contributing employers and members of 1199SEIU United Health Care Workers East (“the Union”), a labor union representing hundreds of thousands of health care workers throughout the northeast. As a VEBA, the Fund is a nonprofit tax-exempt organization administered by a joint Board of Trustees comprised of an equal number of union and employer appointed trustees. The Fund also provides healthcare coverage to its New York employers’ employees under a separate plan that is not at issue in this waiver application.

The Fund offers affordable comprehensive health benefits for low-wage nursing home workers.

Although these Funds are jointly administered, benefits are subject to each Fund’s Summary Plan Description (SPD) and the discretion of the Trustees of that Fund.

We applaud Congress and the Administration for providing this waiver process so that employers (and unions) who are already funding health benefits for employees will not be forced to eliminate coverage during the period prior to 2014. Certainly, without the waiver that would be the result, for the New Jersey Plan.

Below is the Fund's response to information requested by the DHHS relative to group health Plans applying for "a waiver from the restricted annual limits":

1. The terms of the plan for which a waiver is sought:

The Fund is requesting a waiver of the restriction on its current annual maximum of (b)(4) per beneficiary.

2. The number of individuals covered by the plan

There are approximately (b)(4) participants covered by the Fund (b)(4) members; (b)(4) spouses; (b)(4) children).

3. The annual limit and rates applicable to the plan

Currently, the Fund has an annual maximum of (b)(4) per beneficiary, and a lifetime maximum of (b)(4) per beneficiary (which annual maximum will be eliminated effective January 1, 2011) (see attached Aetna plan design summary). The current rate (applicable cost) for the Plan is approximately (b)(4) per active member per year. Participants do not incur any premium charges, but do have certain co-insurance, co-payments and deductibles.

4. A brief description of why compliance with the interim final regulations would result in a significant decrease in access to benefits for those currently covered by such plans or policies, or significant increase in premiums paid by those covered by such plans or policies, along with any supporting documentation

The union and the contributing employers typically negotiate a "wage package" in the collective bargaining process, which primarily includes hourly wage, health and welfare, and pension components. The contribution rates to multiemployer group health plans specified in the wage package and the benefit levels those contribution rates fund, are the product of intense negotiations between the bargaining parties and effectively establish the maximum benefit levels that the parties believe are affordable given the wage package and other benefits. The contribution rates are fixed until the end of the collective bargaining cycle, which varies, as different employers negotiate with the union at different times. Absent agreement of the parties, neither party can force the other to re-open negotiations to adjust rates to meet additional costs.

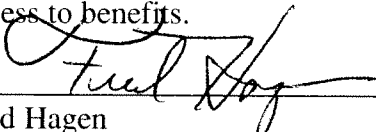
The Fund's actuaries project that compliance with the annual cap requirement pursuant to PPACA will increase the cost of providing health benefits by (b)(4) .

So far, participating employers have been ardently informing us that they cannot afford the enormous increase in health benefit costs that complying with the restricted annual limit rule would impose. Absent relief through the waiver program, if the employers do not agree to reopen collective bargaining and increase contributions (b)(4) the Plan will have to eliminate all coverage for spouses.

Applying the coverage mandates to the coverage that the Fund provides to its participants under collective bargaining agreements will dramatically increase health care costs to an unaffordable level and strain labor-management relations. The waiver program should take account of the conclusions of the bargaining parties as to the benefit levels that are affordable under the wage package by permitting this Plan to maintain its existing annual limit under the terms of the plan.

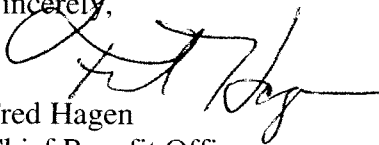
5. **An attestation, signed by the plan administrator or Chief Benefits Officer of the Fund's Plan, certifying 1) that the plan was in force prior to September 23, 2010; and 2) that the application of restricted annual limits to such plans or policies would result in a significant decrease in access to benefits for those currently covered by such plans or policies, or a significant increase in premiums paid by those covered by such plans or policies.**

Attestation: The Fund's New Jersey Plan was in force prior to September 23, 2010. The application of restricted annual limits will result in a significant decrease in access to benefits.



Fred Hagen
Chief Benefits Officer

Sincerely,


Fred Hagen
Chief Benefit Officer
Phone: (646) 473- 6950
Facsimile (646) 473-6019

From: Keels, Lisa (HHS/OCIIO)
Sent: Friday, October 29, 2010 5:52 PM
To: sarah.burgos@1199funds.org
Subject: 1199 SEIU Greater New York Benefit Fund Waiver Application - Request for Additional Information
Dear Mr. Hagen and Ms. Burgos:

Thank you for your application for the Waiver of the Annual Limits Requirements of the PHS Act Section 2711. In order to complete your application, please provide the following information:

- In Section 3 (page 2) of the letter you state: “the Fund has an annual maximum of \$ (b)(4) per beneficiary and a lifetime maximum of (b)(4) per beneficiary (which annual maximum will be effective January 1, 2011).” We would like to clarify whether you intended to state that the lifetime maximum (as opposed to the annual maximum) was intended effective January 1, 2011.
- Does the Plan cover prescriptions? If so, please indicate what the co-pay/coinsurance amount is for prescriptions.
- Thank you for providing us with the current rate for the Plan per active member per year. Please also provide the projected premium rates applicable to the plan or policy forms if the plan were to comply with the restricted annual benefits. In other words, we would like a chart that reflects the following information:

	2010 January Premium (current level)	2011 January Premium (renewal)	2011 January Premium (if \$750,000 annual limit was applied)
EE			
EE + Child (if applicable or other appropriate tier)			
EE + Spouse (if applicable or other appropriate tier)			
Family (if applicable or other appropriate tier)			

In order to complete your application, please provide this information by 5:00 pm, Monday, November 1, 2010. We look forward to receiving your completed application.

Thank you,
Lisa Keels

Lisa M. Keels, J.D.
U.S. Department of Health & Human Services
Office of Consumer Information and Insurance Oversight
Office of Oversight
lisa.keels@hhs.gov

From: Botwinick, Alexandra (HHS/OCIO)
Sent: Friday, November 05, 2010 12:46 PM
To: 'Sarah.Burgos@1199funds.org'
Subject: Waiver of the Annual Limits Requirements of PHS Act Section 2711

Importance: High

Attachments: Updated Jan 1 Approval Letter .pdf
Ms. Burgos,

Thank you for submitting an application for a Waiver of the Annual Limits Requirements of the PHS Act Section for 1199SEIU. HHS has reviewed your application and made its determination. Please see the attached letter.

Please confirm receipt of this letter by replying to this e-mail address with a copy to OCIOOversight@hhs.gov.

Please let me know if I can be of further assistance.

Sincerely,

Alexandra Botwinick

Office of Oversight
HHS/OCIO
alexandra.botwinick@hhs.gov

1199SEIU:000005

From: Sarah Burgos [Sarah.Burgos@1199funds.org]
Sent: Friday, November 05, 2010 12:56 PM
To: Botwinick, Alexandra (HHS/OCIIO)
Cc: OCIIOOversight@hhs.gov.
Subject: RE: Waiver of the Annual Limits Requirements of PHS Act Section 2711
[Good afternoon Ms. Botwinick,](#)

[This will confirm receipt of the waiver approval.](#)

[Thank you very much.](#)

[Sincerely,](#)
[Sarah Burgos](#)

From: Botwinick, Alexandra (HHS/OCIIO) [mailto:Alexandra.Botwinick@hhs.gov]
Sent: Friday, November 05, 2010 12:46 PM
To: Sarah Burgos
Subject: Waiver of the Annual Limits Requirements of PHS Act Section 2711
Importance: High

Ms. Burgos,

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[Please confirm receipt of this letter by replying to this e-mail address with a copy to OCIIOOversight@hhs.gov.](#)

Please let me know if I can be of further assistance.

Sincerely,

Alexandra Botwinick

Office of Oversight
HHS/OCIIO
alexandra.botwinick@hhs.gov

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1199SEIU:000006

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1199SEIU:000007

From: Sarah Burgos [Sarah.Burgos@1199funds.org]
Sent: Monday, November 01, 2010 4:42 PM
To: Keels, Lisa (HHS/OCIIO)
Subject: FW: 1199 SEIU Greater New York Benefit Fund Waiver Application - Request for Additional Information - URGENT

Good Afternoon:

Please note our response to your questions below. If you have any additional questions, please do not hesitate to contact me.

Sincerely,

Fred Hagen
 Chief Benefits Officer
 Phone: 646-473-6950
 Fax #: 646-473-6019
 Email: Fred.Hagen@1199funds.org

From: Keels, Lisa (HHS/OCIIO) [mailto:Lisa.Keels@hhs.gov]
Sent: Friday, October 29, 2010 5:52 PM
To: Sarah Burgos
Subject: 1199 SEIU Greater New York Benefit Fund Waiver Application - Request for Additional Information

Dear Mr. Hagen and Ms. Burgos:

Thank you for your application for the Waiver of the Annual Limits Requirements of the PHS Act Section 2711. In order to complete your application, please provide the following information:

- In Section 3 (page 2) of the letter you sent you state: “the Fund has an annual maximum of (b)(4) per beneficiary and a lifetime maximum of (b)(4) per beneficiary (which annual maximum will be effective January 1, 2011).” We would like to clarify whether you intended to state that the lifetime maximum (as opposed to the annual maximum) will be eliminated effective January 1, 2011. *Apologies, we made a mistake. We intended to state that the lifetime maximum will be eliminated as of January 1, 2011. Thank you for pointing that out.*
- Does the Plan cover prescriptions? If so, please indicate what the out-of-pocket pay/coinsurance amount is for prescriptions. *Yes. The copayment is (b)(4) for generic drugs and (b)(4) for brand drugs on the Fund’s preferred drug list*
- Thank you for providing us with the current rate for the Plan per active member per year. Please also provide the projected premium rates applicable to the plan or policy forms if the plan were to comply with the restricted annual benefits. In other words, we would like a chart that reflects the following information:

	2010 January contribution (current level)	2011 January contribution	2011 January contribution required (if \$750,000 annual limit was applied)
Composite coverage	(b)(4) of payroll	(b)(4) of payroll	(b)(4) of payroll

Please note that employer contribution is a fixed percentage of payroll set in collective bargaining. The rate remains the same irrespective of family size. The contribution rate is fixed until the end of the collective bargaining cycle, and absent agreement of the parties, neither party can force the other to re-open negotiations to adjust rates to

meet additional costs. The (b)(4) identified in the third column above represents the (b)(4) increase in the current rate that would be required the additional benefits.

In order to complete your application, please provide this information by 5:00 pm, Monday, November 1, 2010. We look forward to receiving your completed application.

Thank you,
Lisa Keels

Lisa M. Keels, J.D.
U.S. Department of Health & Human Services
Office of Consumer Information and Insurance Oversight
Office of Oversight
lisa.keels@hhs.gov

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From: Keels, Lisa (HHS/OCIIO)
Sent: Monday, November 01, 2010 5:07 PM
To: Sarah Burgos; fred.hagen@1199funds.org
Subject: RE: 1199 SEIU Greater New York Benefit Fund Waiver Application - Request for Additional Information - URGENT

Thank you for your response, Mr. Hagen. I will let you know if we have additional questions.

Regards,
Lisa Keels

From: Sarah Burgos [mailto:Sarah.Burgos@1199funds.org]
Sent: Monday, November 01, 2010 4:42 PM
To: Keels, Lisa (HHS/OCIIO)
Subject: FW: 1199 SEIU Greater New York Benefit Fund Waiver Application - Request for Additional Information - URGENT

Good Afternoon:

Please note our response to your questions below. If you have any additional questions, please do not hesitate to contact me.

Sincerely,

Fred Hagen
Chief Benefits Officer
Phone: 646-473-6950
Fax #: 646-473-6019
Email: Fred.Hagen@1199funds.org

From: Keels, Lisa (HHS/OCIIO) [mailto:Lisa.Keels@hhs.gov]
Sent: Friday, October 29, 2010 5:52 PM
To: Sarah Burgos
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Composite coverage	(b)(4) of payroll	(b)(4) of payroll	(b)(4) of payroll

Please note that employer tribute a composite that is a fixed percent all set in collective bargaining. The rate remains the same irrespective of family size. The contribution rate is fixed until the the collective bargaining cycle, and absent agreement parties, neither party can force the other to re-open tions to adjust rates to meet additional costs. The (b)(4) identified in the third column above represents the (b)(4) increase in the current rate that would be required the additional benefits.

In order to complete your application, please provide this information by 5:00 pm, Monday, November 1, 2010. We look forward to receiving your completed application.

Thank you,
Lisa Keels

Lisa M. Keels, J.D.
U.S. Department of Health & Human Services
Office of Consumer Information and Insurance Oversight
Office of Oversight
lisa.keels@hhs.gov

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From: Sarah Burgos [Sarah.Burgos@1199funds.org]

Sent: Friday, October 08, 2010 4:59 PM

To: HHS HealthInsurance (HHS)

Subject: waiver

Attachments: Waiver Request 10-8-10.PDF; OA Aetna Select Plan Design summary.pdf

Attached please find a request for a waiver on behalf of the 1199SEIU Greater New York Benefit Fund.

Sarah Burgos on behalf of Fred Hagen, Chief Benefits Officer

1199SEIU Benefit & Pension Fund

330 West 42nd St

New York, NY 10036

(646) 473-6953 (phone)

(646) 473-6019 (fax)

<<Waiver Request 10-8-10.PDF>> <<OA Aetna Select Plan Design summary.pdf>>

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DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Consumer Information and
Insurance Oversight
Washington, DC 20201

Date: October 2010

From: Steve Larsen, Director, Office of Oversight 

Subject: Application for Waiver of the Annual Limits Requirements of PHS Act Section 2711

Dear Waiver Applicant:

Section 2711(a)(2) of the Public Health Service Act (PHS Act), as added by the Patient Protection and Affordable Care Act (Affordable Care Act), requires the Secretary to impose restrictions on the imposition of annual limits on the dollar value of essential health benefits (as defined in section 1302(b) of the Affordable Care Act) for any participant or beneficiary in a new or existing group health plan or a new policy in the individual market for plan or policy years beginning on or after September 23, 2010 and prior to January 1, 2014. Specifically, the Secretary is granted the authority to determine what constitutes a "restricted annual limit" that can still be imposed under such plans or policies prior to January 1, 2014.

The interim final regulations published on June 28, 2010 (codified at 26 CFR § 54.9815-2719T; 29 CFR § 2590.715-2719; and 45 CFR § 147.126) established such restricted annual limits. The regulations also provided that these restricted annual limits may be waived by the Secretary of Health and Human Services (HHS) if compliance with the interim final regulations would result in a significant decrease in access to benefits or a significant increase in premiums. Pursuant to the regulation, HHS issued guidance on September 3 regarding the scope and process for applying for a waiver.

The Office of Consumer Information and Insurance Oversight, Office of Insurance Oversight received and processed your application for the plan(s) or policy(ies) year beginning January 1, 2011. We have determined that your application has met the criteria to obtain a waiver of the restricted annual limits requirements because compliance with the interim final regulations would result in a significant decrease in access to benefits for those currently covered by such plans or policies, or a significant increase in premiums paid by those covered by such plans or policies. To the extent you make any change to your benefit package after March 23, 2010, you must determine whether the change(s) will trigger loss of grandfathering status pursuant to 45 CFR § 147.140(g)(1).

An approval of your request for waiver of the restricted annual limits requirements granted under this process applies only to the annual limit(s) provided in your application for the plan or policy year beginning between September 23, 2010 and September 23, 2011. This waiver only applies to the annual limits requirements in Section 2711 of the ACA and does not apply to any other requirement of the Affordable Care Act, ERISA, the IRS Code or the PHS Act. Further, a group

health plan or health insurance issuer must reapply for any subsequent plan or policy year prior to January 1, 2014 when this waiver expires in accordance with future guidance from HHS. HHS may modify this waiver approval process memorandum and other relevant information.

If you have any questions regarding this letter, please email OCIIOOversight@hhs.gov.